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In the
Supreme Court of the United States

OCTOBER TERM, 1966

No. 856

JACOB J. GORDON,
PETITIONER,

v.

CITY OF WORCESTER ET AL.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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The Proceedings Below

This is an action to establish title to certain land in Worcester brought in the United States District Court for the District of Massachusetts by the petitioner, hereinafter called "Gordon" (R. 3, 4.). The respondent, City of Worcester, hereinafter called "Worcester", moved to dismiss Gordon's complaint on the ground that it failed to state a claim against Worcester upon which relief could

be granted (R. 46-47.). The respondent, Concord Street Trust, hereinafter called "Concord Street" moved to dismiss the complaint on the grounds that 1) the court lacked jurisdiction over the subject matter and that 2) the complaint failed to state a claim against Concord Street upon which relief could be granted (R. 48.). Both motions came before Sweeney, D. J. (R. 1.), who duly dismissed the complaint for lack of jurisdiction (R. 2, 56-57; 59.). On appeal below, the order of the District Court dismissing the complaint was affirmed.

Gordon now seeks a review of this determination.

Facts

The general allegation of jurisdiction contained in Gordon's complaint is that his action was brought because of the violation of Gordon's Constitutional rights under the Fourteenth Amendment (R. 3.).[1] In the numbered paragraphs of his complaint which follow this allegation of jurisdiction and which are material to the issue presented by this petition, Gordon alleged in substance that one Streeter acquired title to the land involved in 1924 (R. 4.); that thereafter, Worcester improperly assessed the said land in the name of a corporation, Streeter and Sons Co. (R. 4-5.); that Worcester, nevertheless, took a tax title to the said land from the said corporation for nonpayment of taxes and by an amended petition in the Land Court of Massachusetts foreclosed the said Streeter's right of redemption in the said land in 1937 (R. 5-6, 28-29.); that in 1955, the said Streeter undertook to assert his title in the said land by an equitable action in the said Land Court

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[1] That the matter in controversy exceeded the sum or value of $10,000. was not expressly alleged. But see paragraphs 21 and 23 of the complaint from which one could possibly infer the allegation of this jurisdictional requirement (R. 8-9.).

(R. 6, 30.); that the said action was concluded adversely to the said Streeter, both in the Land Court and upon appeal to the Supreme Judicial Court of Massachusetts in 1957 (R. 6-7, 30-31.);[2] that a certain mortgagee sought to establish his rights in the said land by a bill filed in the said Supreme Judicial Court in 1959, and which was, thereafter, referred to the said Land Court for determination (R. 8, 21.); that this said bill was concluded adversely to the said mortgagee (R. 8.); that in 1961, Worcester sold the land at public auction (R. 8-9.);[3] that Concord Street subsequently purchased the mortgage of the said mortgagee; that in 1965, the said Streeter conveyed whatever rights he may have had in the said land to Gordon by quitclaim deed (R. 9, 40-42.); that, thereafter, Gordon brought an action of contract against Worcester in the Worcester Superior Court wherein he alleged, among other things, that he held title to the said land (R. 9, 42.); and that this suit was concluded adversely to Gordon on demurrer by Worcester (R. 10, 46.). Nowhere in his complaint does Gordon allege that he was improperly prevented by Massachusetts procedure from either amending his declaration in the said Superior Court action or taking an appeal from the said ruling sustaining Worcester's demurrer.

Question Presented

Did the trial judge correctly dismiss the petitioner's complaint for lack of jurisdiction where the general aver-

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[2] See, *Streeter* v. *Worcester*, 336 Mass. 469 for a concise statement of facts concerning Streeter's involvement with the said land and his subsequent loss of rights in such.

[3] While the complaint herein fails to allege such, it is a fact that one Ross purchased the said land at the said auction and that he, in turn, conveyed it to Concord Street.

ment of federal jurisdiction was not borne out by the allegations which followed?

Reasons for Denying the Writ

The question is neither novel or weighty. It is well settled that the general allegation of a federal question contained in a complaint must be borne out by the claim, well pleaded, which follows.[4] If the general allegation of federal jurisdiction is so found to be wholly insubstantial, the Court may properly dismiss for lack of jurisdiction.

See: *Bell* v. *Hood*, 327 U.S. 678, 682-683 (So stated.).

T. B. Harms Company v. *Eliseu*, 339 F.2d 823, 828 (2nd Cir. 1964), cert. denied, 381 U.S. 915 (In context of copyright act, a general allegation that case arose under the said act was insufficient where no allegation of infringement followed.).

Mainelli v. *Providence Journal Company*, 312 F.2d 3, 5-6 (1st Cir. 1962) Court noted that proper course is to dismiss for lack of jurisdiction where federal claim is wholly insubstantial.).

An examination of Gordon's complaint reveals that he has failed to allege a single fact which would support his general allegation of a Fourteenth Amendment violation. From this complaint, one may infer that Gordon received all the procedural benefits which Massachusetts affords to

[4] See 2 Moore's Federal Practice (2d Ed.) sec. 8.09(1), where rule is stated and discussed; see also *Kabath* v. *O'Connor*, 234 F. Supp. 917, 920 (E.D.N.Y. 1964) and authorities cited (Rule stated and applied.); *accord*, *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178, 189-190 (Jurisdictional facts must be alleged and proved where defendants puts such in issue in his answer.).

litigants similarly situated. Thus, it was proper for the trial court below to dismiss the complaint for lack of jurisdiction. The federal claim was wholly insubstantial.

It is clear that this petition presents no important question concerning the administration of law. Instead, it presents only an exercise in the application of settled law to a rather lengthy and argumentative complaint (R. 3-46.).

Conclusion

For the reasons set forth above, it is respectfully urged that this petition for writ of certiorari be denied.

Respectfully submitted,

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